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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/612,769	07/01/2003	Christopher Che	021756-017600US	4994

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EXAMINER	
MYINT, DENNIS Y	

ART UNIT	PAPER NUMBER
2162	

DATE MAILED: 02/10/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/612,769	CHE ET AL.	
	Examiner	Art Unit	
	Dennis Myint	2162	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *01 July 2003*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-29* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-29* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *01 July 2003* is/are: a)☒ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

1. Claims 1-29 have been examined.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

1. Claim 1, 3-5, 7-18, and 20-28 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick Jr. et al. (U.S. Patent Number 6625647) in view of Chen et al. (U.S. Patent Number 5793976).

Referring to claim 1, Barrick Jr. et al. is directed to a system and method for assembling timing data in a multi-layer server environment, comprising:

generating an HTML request (Barrick Jr. et al., Column 4, Line 41-65);

depositing a time of generation of the HTML based request in one or more hidden data fields (Column 9 Line 1-10 "Delta Field" and Figure 5 "Delta Field" 502) associated with the HTML based request (Barrick Jr. Column 7, Line 43 through Column 8 Line 20); and

forwarding the HTML based request to one or more servers (Barrick Jr. et al., Column 7 Line 15-22);

Barrick Jr. et al. teaches that the response is sent back from the server to the browser agent, located at the client machine, which calculates the round-trip time based on the request time and arrival time at the browser (Barrick Jr. et al., Column 7 56-66). Barrick Jr. et al. does not explicitly disclose that the request is sent to one or more servers where arrival times and departure times are additionally added to the hidden fields at each destination.

However, Chen et al. teaches a method and system for monitoring of network performance, wherein a special class of packet called "management packet" (Chen et al., Column 6 Line 55-60) is defined which includes an information field which is modified by all the nodes along a virtual connection (Chen et al., Column 6 Line 55 through Column 7 Line 5). Said management packets are used to collect performance parameters along any virtual connection, including packet delays at each intermediate node where arrival time and departure time at each node are used to calculate delay time at each and recorded into the packet (Chen et al., Figure 2 and Column 7 Line 50 through Column 8 Line 54).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of acquiring arrival and depart time at each node (servers or switches or routers) as taught by Chen et al. to the system and method taught by Barrick et al. so that, when an HTML based response is generated in the resultant system and method, arrival times provided by one or more servers will be transferred to one or more hidden data fields and the HTML based response will be forwarded to one or more servers that deposit a departure time in the one or more hidden data fields. One would have been motivated to do so in order that "the information field of a management cell is modified by all the network nodes along a virtual connection, not just by the virtual end points" (Chen et al., Column 6 Line 65 through Column 7 Line 5).

Referring to claim 3, the system and method taught by Barrick Jr. et al. in view of Chen et al. as discussed above in regard to claim 1 discloses the invention as claimed. Barrick Jr. et al. teaches the storing of the arrival times and departure times in the hidden data fields in the HTML based response in a database (Barrick Jr. et al., Column 5 Line 1-10 and Column 10 Line 52-58).

Referring to claim 4, the system and method taught by Barrick Jr. et al. in view of Chen et al. as discussed above in regard to claim 1 discloses the invention as claimed. Barrick Jr. et al. teaches the performing analysis on the arrival times and the departure times in the database (Barrick Jr. et al., Column 10 Line 55-61).

Referring to claim 5, the system and method taught by Barrick Jr. et al. in view of Chen et al. as discussed above in regard to claim 1 discloses the invention as claimed.

Chen et al. teaches that at least one of the arrival time and the departure time is based on a local time associated with the one or more servers ("local measurement of packet delay", Chen et al. Column 7 Line 17-27).

Claim 7,8,9,13, 21, 22, 23, 24, and 25 are rejected on the same basis as claim 1.

Claim 10, 11, 12, 14, and 15, and 26 are rejected on the same basis as claim 3.

Referring to claim claims 16 and 17, Official Notice taken that the use of internal clock for keeping local time is notoriously well known in the art. Therefore, servers of claim 16 and 17 are inherently equipped with internal clocks simply because those are computers.

Referring to claim 18, the system and method taught by Barrick Jr. et al. in view of Chen et al. as discussed above in regard to claim 1 discloses the invention as claimed. Barrick Jr. et al. teaches that at least one first server is a web server (Barrick Jr. et al., Column 4 Line 58-60 "web server" 104 and Figure 1C "web server" 104).

Referring to claim 20, the system and method taught by Barrick Jr. et al. in view of Chen et al. as discussed above in regard to claim 1 discloses the invention as claimed. Since the system and method taught by Barrick Jr. et al. in view of Chen et al. as applied to claim 1 above generates arrival times and departure times, HTML based request and response, arrival time generator and departure time generator inherently exist in the said system and method.

Claim 27 is rejected on the same basis as claim 4.

Claim 28 is rejected on the same basis as claim 5.

2. Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick Jr. et al. in view of Chen et al. and further in view of Fish et al. (U.S. Patent Application Publication Number 2004/0111394).

Referring to claim 2, Barrick Jr. et al. in view of Chen et al. as applied to claim 1 above discloses that qualitative assessment of the hidden data is presented to the user (Barrick Jr. et al., Column 8 Line 7-20) but does not explicitly recite that the hidden data field or fields themselves are displayed to the user. However, Fish et al. teaches a method for writing debug data into hidden fields of HTML or XML document, which hidden until the user makes said hidden fields visible to be displayed (Fish et al., Paragraph 0023, 034, and 0038-0039).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of displaying hidden data fields as taught by Fish et al. to the system and method taught by Barrick Jr. et al. in view of Chen et al. as applied to claim 1 above so that, the method of claim 1 would further comprise displaying the one or more hidden data fields to a user. One would have been motivated to do so in order to simply allow the user analyze the hidden data instantly rather than storing the hidden data in a database.

3. Claim 6 and 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick Jr. et al. in view of Chen et al. and further in view of Engel (U.S. Patent Application Publication Number 2004/0246996).

Referring to claim 6, Barrick Jr. et al. in view of Chen et al. as applied to claim 5 above does not explicitly recite that the local time of at least one of the one or more servers is synchronized with at least one other of the one or more servers. However, Engel teaches a method for time synchronization across communication devices wherein local time of one or more nodes is synchronized by exchanging timing packets (Engel Paragraph 0017).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the feature of synchronizing local time among nodes as taught by Engel to the system and method taught by Barrick Jr. et al. in view of Chen et al. as applied to claim 5 so that, in the resultant system and method, local time of at least one of the one or more servers will be synchronized with at least one other of the one or more servers. One would have been motivated to do so in order to determine delay time between nodes (Engel Paragraph 0003).

Claim 29 is rejected on the same basis as claim 6.

4. Claim 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barrick Jr. et al. in view of Chen et al. and further in view of Blythe et al. (U.S. Patent Application Publication Number 2004/0139433).

Referring to claim 19, Barrick Jr. in view of Chen et al. as applied to claim 13 above does not teach that at least one second server is an application server. However, Blythe et al. teaches the use of application servers in distributed environment (Blythe et al., Paragraph 0036 and 0054).

At the time the invention was made, it would have been obvious to a person of ordinary skill in the art to add the use of application servers to the method and system of Barrick Jr. et al. in view of Chen et al. as applied to claim 13 so that said system and method would comprise at least one second server which is an application server. One would have been motivated to do so in order to simply measure performance metrics of such servers.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dennis Myint whose telephone number is (571) 272-5629. The examiner can normally be reached on 8:30AM-5:30PM Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Breene can be reached on (571) 272-4107. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Dennis Myint AU-2162

BG

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